Private Calendar No. 778.

61st Congress, 3d Session. } HOUSE OF REPRESENTATIVES. { Report No. 2179.

ESTATE OF GEN. GEORGE WASHINGTON.

February 16, 1911.—Committed to the Committee of the Whole House and ordered to be printed.

U.S. Cong, House

Mr. Morse, from the Committee on Private Land Claims, submitted the following

REPORT.

[To accompany H. R. 5266.]

The Committee on Private Land Claims, to which was referred the bill (H. R. 5266) to reimburse the estate of Gen. George Washington, having had the same under consideration, report it back to the House with an amendment which strikes out the preamble and the first section, and in lieu of the first section inserts the following:

That the Secretary of the Interior be, and he is hereby, authorized and directed to issue patent to Robert E. Lee, junior, administrator de bonis non, with the will annexed, of the estate of General George Washington, three thousand one hundred acres of the public lands of the United States, to be selected by the said administrator, or his assigns, from the unreserved and nonmineral public lands of the United States; which shall be taken and received by said administrator as full compensation to the estate of General George Washington for the loss of his three thousand one hundred acres of land warrants and grants made thereunder, and for any and all claims which his estate might or could make against the United States on account of land warrants or grants held by him, or his estate, upon warrants locateable northwest of the Ohio River, and for every and all claims whatsoever.

The committee recommends that the bill as amended do pass.

The claim of the heirs of George Washington against the United States for reimbursement for the loss of lands of his in the State of Ohio is one of absorbing interest.

At the close of the Revolutionary War, Gen. George Washington was the owner of a 3,000-acre land warrant, purchased by him from one John Rootes.

On December 7, 1763, Lord Dunmore, then governor of the royal colony of Virginia, issued a land warrant to John Rootes for 3,000 acres of land to be located by him on the lands of the colony northwest of the Ohio River. This warrant was issued in accordance with the proclamation of King George III in 1763.

On January 5, 1785, the Legislature of the State of Virginia passed a joint resolution which provided that all persons who had served in

the Armies of the United States from May 1, 1779, until the close of the Revolutionary War, and had a land warrant in his possession by right or by assignment before May 1, 1779, might exchange the same with the register of the land office for a warrant; that he should be permitted to locate on vacant land reserved on the western side of the Ohio River for officers and soldiers of the Continental Army.

Gen. Washington, on February 14, 1785, changed his old warrant for a new one under this joint resolution and obtained a 3,000-acre continental line land warrant from the land office of the State of Virginia.

Some time during or before the summer of 1787, Gen. Washington purchased another small land warrant, one for 100 acres of land, which had been issued to one Thomas Cope for services in the continental line from Virginia.

In the summer of 1787, Gen. Washington placed these two warrants in the hands of Col. John O'Bannon, a deputy surveyor of the Virginia military district of Ohio, for location, and directed their location in the Virginia military district northwest of the Ohio River.

Col. John O'Bannon entered land for Gen. Washington as follows: On January 17, 1788, by survey number 1650, 839 acres, in what is now Franklin Township, Clermont County, Ohio. On May 13, 1788, he entered 1,235 acres in the same county; on May 12, 1788, he entered 977 acres, 926 acres of which was made on the 3,000-acre warrant and 51 acres of which was made on the Thomas Cope warrant of 100 acres.

Thus it will be seen that entries were made for 3,051 acres of the 3,100 acres which Gen. Washington was entitled to patent.

On and between April 4, 1788, and May 26, 1788, these entries were surveyed by Col. John O'Bannon, and were duly recorded in the books of Col. Richard Anderson, the surveyor of the Virginia military district of Ohio. They were made under a law of the State of Virginia enacted in 1783, and Gen. Washington and his agents believed that the warrants, entries, and surveys before mentioned should for that reason be returned to the land office of the State of Virginia, and this was done on April 20, 1790.

On December 1, 1790, grants were made by Beverly Randolph, the governor of the State of Virginia, to Gen. George Washington, for each of said three surveys, under the belief, that, according to the terms of the reservation, it was incumbent on the State of Virginia to complete the title.

Congress, on August 10, 1790, confirmed these surveys and again on May 13, 1800, Congress confirmed them by an act entitled "An act to authorize the issuing of certain patents."

It would seem from the foregoing that the title to these lands had been confirmed in Gen. Washington and that he could not possibly lose them by fraud on the part of the officers of the Government of the United States, but such is not the case. He did lose them and an officer of the Government was a party to the transaction. A man by the name of Joseph Kerr, who was a deputy surveyor of the Virginia military district of Ohio, being well acquainted with the Washington entries, his warrants and his surveys, and also knowing that by inadvertence or through ignorance of the law, Gen. Washington had not filed these surveys with the Secretary of War, the said Kerr proceeded to secure the legal title of these lands. He covered Gen. Washington's

entry and survey with other entri . and in so doing had the audacity to use Gen. Washington's field notes for this purpose. He did not even take the trouble to go out in the field and resurvey the land, but appropriated the field notes as he found them of record in the land office.

There were rumors that an effort was being made to steal these lands, and this rumor reached Gen. Washington. He wrote to the local land office and said that he proposed to defend his title and would stand a lawsuit before he would lose the land, and the local land officer assured him that he was safe and promised to notify him if anything occurred.

Gen. Washington died on the 14th day of December, 1799, and on the 26th day of February, 1806, this man Kerr, who afterwards became a Senator of the United States, made his entry and he made it with malice aforethought.

On the 4th day of March Judge Bushrod Washington sent a letter by Chief Justice Marshall to Richmond, asking for these papers, and on the 14th day of March a petition of the executors was introduced in Congress. These two petitioners were Judge Washington, a member of the Supreme Court, and Col. Lawrence Lewis, who was a nephew of George Washington's, and who had married Nellie Custis. This petition was referred to the Committee on Public Lands, discussed in the Committee on the Whole, and Congress concluded that it could confirm Gen. Washington's title by general law instead of a special law, and with that end in view passed the act of March 3, 1807. The trouble with this law was that it had no retroactive effect. Congress should have cured the cases of conflict between locators made between August 10, 1790, and March 2, 1807, but it did not, because of the fact that Kerr, on April 20, 1806, had two of the surveys patented, and on January 8, 1808, had the third one patented, notwithstanding the act of March 3, 1807, giving the executors of George Washington five years from March 23, 1807, to return their surveys and obtain their patents.

Thus it is seen that the act of March 3, 1807, was of no benefit to the estate of Gen. Washington whatever, but was defeated by the action of the officers of the United States in issuing patents to Kerr's principals.

Every effort of the heirs of the estate of Gen. Washington to secure relief has met with failure.

Your committee is, therefore, of the opinion that the bill should pass as amended.

The executors are of the opinion that the land is, at the present time, even with all the timber removed, worth more than $100 an acre, and that they are entitled to compensation for it at this rate. This would mean an appropriation out of the Federal Treasury of $305,100.

We can not take this view of the case. In the first place, the Government very seldom pays interest on these old claims, and we do not feel like establishing a precedent in this case. Attention is also called to the fact that while Gen. Washington probably paid taxes on this land for the first 18 years, his estate has not paid taxes since that time. He valued the land in his will at $5 per acre.

Hon. Robert E. Lee, jr., has made such a clear and concise statement of this case that your committee has decided to add the same to this report, and make it a part thereof.

THE FACTS.

The undersigned, Robert E. Lee, jr., a citizen and resident of Burke, Fairfax County, in the State of Virginia, was, on the 29th day of October, 1907, duly appointed and qualified as administrator de bonis non, with the will annexed, upon the estate of Gen. George Washington, of Mount Vernon, and said trust is in full force and unadministered.

That Gen. Washington completed the preparation of his last will and testament on the 9th day of July, 1799, and with it he prepared an inventory and schedule of his estate and a document explanatory of the situation of the various parts of his estate. That this inventory and schedule was filed with his will by his original executors for probate, and on their motion was accepted and recorded as the proper inventory and schedule of his estate. That in said inventory he mentioned and stated that he owned 3,051 acres of land in the Northwest Territory, in the Virginia military district, and that its value was $15,251. That that was its value at that time when it stood in unbroken forest, and it has constantly increased in value until the present time when, estimating only the naked value of the land without improvements, and including the value of the original timber which stood thereon, it is worth over $100 per acre.

That the history of Gen. Washington's title to said real estate and the account of the loss to his estate of the same is as follows:

On December 7, 1763, Lord Dunmore, then royal governor of the colony of Virginia, issued a land warrant to John Rootes, for 3,000 acres of land, locatable on the lands of the colony northwest of the Ohio River. That this warrant was issued in accordance with a proclamation of His Majesty, George III, King of England, in 1763. That prior to May 1, 1779, Gen. George Washington purchased this warrant of John Rootes, and took an assignment thereof. That on January 5, 1785, the Legislature of the State of Virginia passed a joint resolution which provided that all persons who had served in the armies of the United States from May 1, 1779, until the close of the war between Great Britain and America and had a land warrant in his own right, or by assignment, before May 1, 1779, issued agreeable to the proclamation of the King of Great Britain in 1763, might exchange the same with the register of the land office for a warrant, which he should be permitted to locate on vacant land, reserved on the western side of the Ohio River, for officers and soldiers on Continental line.

That in pursuance of said resolution Gen. Washington, on February 14, 1785, obtained a 3,000-acre Continental line land warrant from the land office of the State of Virginia in exchange for the John Rootes warrant.

That some time prior to the summer of 1787, Gen. Washington purchased of one Thomas Cope, a warrant for 100 acres of land issued to him for services in the Continental line from Virginia and took a proper assignment thereof. That in the summer of 1787, Gen. Washington placed these two warrants in the hands of Col. John O'Bannon, a deputy surveyor of the Virginia military district of Ohio, for location, and directed their location in the Virginia military district, northwest of the Ohio River. That Col. John O'Bannon made the following entries of land on said warrant:

On January 17, 1788, No. 1650, 839 acres in what is now Franklin Township, Clermont County, Ohio.

On May 13, 1788, No. 1765, 1,235 acres on the Little Miami River, 3½ miles above the mouth of its east fork, in what is now Miami Township, Clermont County, Ohio.

These two entries were made on the warrant for 3,000 acres, numbered 3753. On May 12, 1778, Col. O'Bannon entered for Gen. Washington No. 1775, for 977 acres, 848 acres of which now lies in Union Township, Clermont County, Ohio, and 129 acres of which now lies in Anderson Township, Hamilton County, Ohio, and 926 acres of which was made on warrant No. 3750 for 3,000 acres, and 51 acres of which was made on the Thomas Cope warrant for 100 acres.

That afterwards, on April 4, 1788, there was made for Gen. Washington a survey, No. 1650, for 839 acres on the entry 1650. That on May 27, 1788, there was made for Gen. Washington a survey, No. 1765, on his entry of that number, for 1,235 acres.

On May 26, 1788, there was made for Gen. Washington a survey, No. 1775, on the entry of that number, for 977 acres. That these three entries and surveys were made by Col. John O'Bannon and were duly recorded in the books of Col. Richard Anderson, the surveyor of the Virginia military district of Ohio.

That said entries and surveys were made under a law of the State of Virginia enacted in October, 1783, and Gen. Washington and his agents were under the impression that the warrants, entries, and surveys before mentioned should, for that reason, be returned to the land office of the State of Virginia, which was done some time prior to April 20, 1790.

That on December 1, 1790, grants were made by Beverly Randolph, the governor of the State of Virginia, to Gen. George Washington for each of said three surveys.

under the belief that, according to the terms of the reservation, it was incumbent on the State of Virginia to complete the title.

That these entries and surveys were well known to the locators and surveyors in the Virginia military district of Ohio, and also the facts that they were made on a resolution warrant.

That these surveys were confirmed by Congress, in the act of August 10, 1790 (vol. 1, p. 182), entitled "An act to enable the officers and soldiers of the Virginia military line, on Continental establishment, to obtain titles to certain lands lying northwest of the Ohio River, between the Little Miami and Scioto" in its reference to section 3, to lands already located.

That these locations of Gen. Washington were also confirmed on May 13, 1800, by the act of Congress of that date (vol. 2, p. 80), entitled "An act to authorize the issuing of certain patents."

That notwithstanding these facts, one Joseph Kerr, a deputy surveyor of the Virginia military district of Ohio, well knowing that the Washington entries, warrants, and surveys, before described, had not been filed with the Secretary of War, on February 26, 1806, made three entries, completely covering the said Washington locations, and in making said entries used the field-note descriptions in the three Washington surveys.

That said Joseph Kerr, deputy surveyor, covered Gen. Washington's entry and survey No. 1650 with one for the same number of acres, No. 4847, on part of Gen. John Nevill's warrant No. 937, belonging to his estate. He covered Gen. Washington's entry and survey No. 1765 with one for 1,066⅔ acres on part of the same warrant No. 937, belonging to the estate of Gen. John Nevill and numbered 4848.

He covered Gen. Washington's survey No. 1775, for 977 acres, with one numbered 4862 for the same number of acres on a part of a warrant, No. 107, the property of Henry Massie.

On May 20, 1806, Joseph Kerr, deputy surveyor, made a survey, No. 4847, for 839 acres covering Nevill's said entry of the same number, and in so doing used Gen. Washington's field notes for his survey No. 1650.

On May 22, 1806, the same Joseph Kerr made a survey, No. 4848, on his entry of that number for 1,066⅔ acres of land and thereby covered Gen. Washington's entry and survery No. 1765 and used his field notes for that purpose.

That said two surveys purported to have been made for Gen. John Nevill, who had departed this life testate July 20, 1803, having his domicile in Pittsburg, Allegheny County, Pa., leaving his son Presley Nevill, and his daughter, Amelia Craig, wife of Isaac Craig, his residuary devisees.

That on March 14, 1806, Judge Bushrod Washington and Lawrence Lewis, executors of Gen. Washington's estate, filed their petition in Congress (House of Representatives) in behalf of his devisees, praying that an act might be passed confirming the title of said executors to the Washington surveys herein mentioned as numbered 1650, 1765, and 1775.

This petition was referred to the Committee on Public Lands of the House, which reported and as a result the act of March 3, 1807 (vol. 5, U. S. Stats., p. 437), entitled "An act authorizing patents to issue for lands located and surveyed by virtue of certain Virginia resolution warrants," was passed by both Houses and approved by the President. That the object and purpose of this act was to enable the executors of Gen. George Washington to perfect their title by patent, to the surveys 1650, 1765, and 1775 herein, but notwithstanding this act, the said Joseph Kerr, on April 30, 1807, procured a patent to issue to Presley Nevill and Amelia Craig, devisees of John Nevill, for said survey No. 4847, Gen. Washington's survey No. 1650, and on the same day procured a patent to issue to Presley Nevill and Amelia Craig, devisees of John Nevill, for said survey 4848, Gen. Washington's survey 1765.

That on the 8th day of January, 1808, the said Joseph Kerr procured a patent to be issued for said survey 4862, Gen. Washington's survey No. 1775, to Henry Massie. That on the 4th day of March, 1809, the said Joseph Kerr purchased said two surveys, 4847 and 4848, of Presley Nevill and Amelia Craig, devisees of John Nevill, and on March 17, 1815, obtained a deed therefor from said Nevill and Craig, which is recorded in deed book No. 12, pages 89, 90, and 91, of the record of deeds of Clermont County, Ohio. That the present owners of the said two surveys claim and hold their title from said Joseph Kerr, who, on December 10, 1814, became a Senator of the United States from the State of Ohio.

That Henry Massie, the patentee of the said survey 4862, Gen. Washington's survey No. 1775, sold and disposed of the same and the present owners of said survey claim and hold title derived from the said Henry Massie.

That the said two warrants for 3,000 acres and 100 acres, issued originally to John Rootes and Thomas Cope, respectively, were the property of Gen. Washington at

the time he relinquished all claim for his services during the Revolutionary War, and when he received the sum of $64,415 for his expenses only during the same war.

That Gen. Washington died in the belief that the 3,051 acres of land embraced in in said surveys 1650, 1765, and 1775 were his, and that the values thereof would be realized on to his estate and devisees, but in fact nothing was ever realized out of the same to his estate, on account of the operations of the said Joseph Kerr, with the warrants of John Nevill and Henry Massie.

That the estate of Gen. Washington has been left with said warrants wholly unsatisfied, and has wholly lost said lands and the entire value thereof.

That on August 31, 1852, Congress passed the scrip law of that date (vol. 10, U. S. Stats., p. 143), entitled "An act to make further provisions for the satisfaction of Virginia land warrants."

That this act was passed in pursuance of a resolution of the Virginia Legislature, adopted April 12, 1852 (Va. Acts 1852, p. 316), which requested the same. That after the passage of said act of August 31, 1852, before recited, on December 6, 1852, the Virginia Legislature passed another resolution (Va. Acts 1852–53, p. 357), and accepted said act of Congress of August 31, 1852.

That by the action of the Virginia Legislature in the two above resolutions and by said act of Congress of August 31, 1852, better known as the scrip law, the obligation of the United States to issue scrip in lieu of said warrants, became a part of the public debt of the United States authorized by law, and as such could not be questioned or affected by any action of Congress.

That the last action of the original executors of Gen. Washington, in the settlement of his estate, was taken many years prior to the passage of the scrip law of 1852.

That at any time between August 31, 1852, and March 3, 1900, the estate of Gen. Washington might have commuted said warrants into scrip, but on March 3, 1899, in an act of that date entitled "An act making appropriations for sundry civil expenses of the Government for the fiscal year ending June 30, nineteen hundred, and for other purposes," it was provided that all Virginia military warrants, not surrendered to the Secretary of the Interior within 12 months from the passage of said act, March 3, 1899, should be forever barred and invalid. That Gen. Washington's two warrants herein described, to wit: The Rootes warrant for 3,000 acres and the Cope warrant for 100 acres were never presented to or surrendered to the Secretary of the Interior, for the want of any representatives of his to make such surrender.

Your petitioner respectfully states that in his judgment said act of March 3, 1899, in so far as it attempts to extinguish said warrants, is in violation of section 4 of the fourteenth amendment to the Constitution of the United States. That the estate of Gen. Washington has lost both the lands covered by said warrants, and the warrants themselves, and that by reason of the acts of Joseph Kerr, sanctioned by officers of the United States, his executors were deprived of the right to return his surveys 1650, 1765, and 1775 within five years from March 23, 1807, and to obtain patents thereon.

That had Congress prior to February 26, 1806, enacted the famous proviso of the act of March 2, 1807, entitled "An act to extend the time for locating Virginia military land warrants for returning surveys thereon to the office of the Secretary of the Department of War, and appropriating lands for the use of schools in the Virginia military reservation, in lieu of these heretofore appropriated," which forbade, after the passage of said act, locating of lands previously surveyed, the title of Gen. Washington's estate to said three surveys, 1650, 1765, and 1775, would have been preserved and that the lands embraced therein would have been realized to his estate.

That said proviso remained in force from March 2, 1807, until December 31, 1851, a period of over 44 years, and protected all first locations made after its enactment. That Gen. Washington's locations on surveys 1650, 1765, and 1775 were all first locations and made upon lands which had never been located upon before.

That in equity and justice the estate of Gen. Washington should be placed in the same position as though the proviso of the act of March 2, 1807, had been a part of the act of August 10, 1790, which opened the Virginia military district to location, as it was a part of the muniments of title in said district, for over 44 years after March 3, 1807.

That the personal representative of the estate of Gen. George Washington could not recover those lands from the present owners nor would it be right that he should do so. That the estate of Gen. Washington is the only landowner in the Virginia military district of Ohio which lost its lands by reason of the officers of the United States permitting other parties to obtain title to his locations during the time his executors had in which to return his surveys for patent. That Gen. Washington was so engaged in public business from the close of the War of Independence until his death, that he was compelled to neglect his private business, or intrust it to agents. That he and they were under the belief that Virginia having made the law for locations in the Vir-

ginia military district, in what is now the State of Ohio, and having reserved it for her soldiers, would have to complete the title to these locations and therefore his surveys were not returned to the Secretary of War in his lifetime, nor by his executors prior to March 3, 1807. That these omissions, however, were all cured by the act of March 3, 1807, but at the same time, it was impossible for his executors to have cured their title under the act of March 3, 1807, before referred to, because of the issuing of the patents to the devisees of John Nevill and to Henry Massie.

That at the time of the passage of the act of March 3, 1807, Gen. Washington's executors still had two years under the act of March 23, 1804, to return these surveys to the Secretary of War, and were not in any default in respect to these surveys.

That all the facts herein set forth except the values of the lands in question are matters of record as to which there can be no dispute and controversy whatever. That as to the values herein stated, the same are reasonable and just and can be established by more than 50 of the reputable freeholders of the vicinage, competent to judge.

Wherefore he submits that the bill for the relief of the estate of Gen. Washington should pass.

ROBERT E. LEE, Jr.,
Administrator de bonis non, with the will annexed of Gen. George Washington.

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